WRITTEN STATEMENT OF

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Submitted to
THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
FIELD HEARING RELATED TO
REAUTHORIZATION OF FEDERAL SURFACE TRANSPORTATION PROGRAMS

Under the
"SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS (SAFETEA-LU)"

MARCH 4, 2011

While the Transportation and Infrastructure Committee did not specifically focus the Illinois listening session on matters related to rail issues, we would like to thank the Chairman and Committee members for their receptivity to receiving a written statement for the record as it relates to rail policy and rail-to-roadway infrastructure project funding, as that is a critical issue to the local units of government that have comprised the *ad hoc* "TRAC Coalition" since its inception in 2008. The TRAC Coalition* originally formed to create a cohesive regional response to Canadian National Railways' (CN) acquisition of the EJ&E rail line that runs in an arc through the collar counties of Chicago in the Illinois 10th, 8th, 6th, 14th, 13th, 11th, 2nd, and Indiana 1st congressional districts.

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* The local elected leaders of the TRAC Coalition are drawn from the numerous local and county governments along the EJ&E rail corridor. TRAC members worked together to represent the region's interests before the Surface Transportation Board (STB) during the environmental review process prior to its approval of the merger; we are representing the region's interests before the federal Appellate Court in the appeal of that STB decision; and, we are working with the STB during its oversight period of the transaction to insure that: 1) CN is complying fully with the spirit and letter of the STB's mitigation mandates; and, 2) the STB's environmental impact assumptions are proving largely accurate during the operational implementation period of the EJ&E/CN merger.

As the "poster child" for a region dealing with the ramifications of a railroad merger that transformed a century-old rail freight "country back road" into an international rail freight "superhighway" in our communities, TRAC would like to offer our perspective to your Committee and your congressional colleagues on the necessity to improve federal policies for integrating increased freight rail operations into impacted communities. While we would like to work with the Committee at some point to address deficiencies related to the overall STB process in reviewing rail mergers and the agency's oversight efforts post-merger, we will leave that for another day as we understand that the Committee has been gathering public input from across the country to best determine how to approach the reauthorization of SAFETEA-LU.

We commend the Committee for its proactive outreach in shaping public policy, and we are pleased that TRAC can serve as a resource to inform your decision-making on a critical bill that will shape the nation's investment in transportation projects for years to come. Our comments will focus on how best to increase private sector investment in rail transportation projects -- specifically those rail-roadway grade separation projects that are necessitated when a Class I railroad exponentially increases freight volume on what had been a Class II or Class III rail line. As Congressman Hultgren said in his opening statement prior to hearing public comments on February 20, funding of transportation projects such as these are vital to attracting business to any region as "people need to be able to get to work."

Perspective of TRAC Member Communities:

We would like to preface our comments by summarizing the point of view the TRAC communities bring to this issue, and assure the Committee that we are not opposed to efficient rail commerce as we are quite familiar with the trade-offs that accompany business development – whether it be commercial, residential, retail, or industrial development. To the contrary, the fact that we do work closely with businesses and developers on a daily basis makes us fully aware that the continued economic growth of this region is fundamentally tied to the proper integration of business interests into the fabric of our communities.

As local elected leaders, our goal is to insure that any such development ultimately ends up being a win-win situation for all involved parties and the people we represent since business development is such a critical driver to economic growth and supports our tax bases. Local zoning ordinances provide the foundation for sensible, planned, new growth and development regulations assist us in that endeavor while providing clarity of expectations for business interests. Development agreements and regulations traditionally provide that developers underwrite the costs of necessary infrastructure for a new development in the community as it is one of the costs of doing business. While local governments insure that private property rights and community character are protected through zoning, the proper allocation of development costs between the new business and the community insures that our residents are not saddled with a development that creates an uncompensated harm that forces the local community to subsidize the new business venture or development

It is our very experience as local elected government leaders, however, that has caused us to be so taken aback by the policy framework surrounding the review, approval, and oversight process for rail mergers. TRAC has discovered over the last several years that federal transportation policy seems to prioritize rail commerce above all other considerations, even other interstate commerce considerations. While TRAC certainly believes that we all benefit from a cost-effective freight rail system, it makes little sense to continue a policy framework that has harmed other regional, national, and international commerce drivers that thrive in the outlying areas of greater metro Chicagoland. Instead, freight railroad policy must recognize that railroads' interests must be balanced with other transportation and public interests, so the process does not continue to be a zero-sum game with immense negative consequences for taxpayers.

Clearly, the funding of projects to alleviate some of the most egregious impacts of freight rail operations on the communities the railroads operate in or the roadways they cross at grade level is the two-ton gorilla in the room, and unfortunately, the issue does not promise to fade away. Given the long-term expected growth in freight rail traffic and the reality that public funds for such projects are limited, by necessity, it is in the unambiguous interests of the federal government to shape the policies that can sustain such commerce while meeting reasonable public expectations for lessening the environmental harms freight rail traffic causes.

It has been our experience on the EJ&E/CN merger that the railroads enjoy a privileged status in rail transactions – even in those cases where there are negative environmental impacts of immense proportions. Absent a change in public policy to "level the playing field" for all parties -- and a guaranteed public-private funding mechanism to build vital community infrastructure upgrades -- such transactions will continue to remain rancorous, time-consuming, and costly.

In an effort to move this point of view beyond the abstract, we would like to provide an example of just one TRAC community that had been injured by the favored status of the railroads in rail policy and its limitations in addressing community and regional business harms that ensue from rail mergers. Barrington is a town of just over 10,000 people 35 miles northwest of Chicago. The town was incorporated in 1865 along a small railroad that came to the area in 1854, and now serves at the UP/Metra commuter line. The EJ&E line was built in the community in 1888 and until CN's purchase of it in 2008, it was a small local line used to serve local customers of the steel industry. Even during World War II (at the peak of its use) the EJ&E saw very little in the way of freight traffic, and as a result, Barrington grew up as the business, social and schools hub to the many small offshoot towns that are now situated around it.

The EJ&E rail line runs through the heart of Barrington, intersecting with 4 major arterial roadways (with a combined average daily traffic count of nearly 75,000 cars) and a Metra commuter rail line that runs 65 trains a day – all within a span of 5,918 feet. The closet grade-separated roadway is eight miles south of Barrington. After over 120 years of Barrington co-existing peacefully with the local freight traffic using the EJ&E, CN decided to purchase the line and transform it into an international intermodal freight super-highway – the main Chicago bypass for goods shipping from Asia into Canada, and moving to Memphis and beyond. With freight trains running from 6,500 feet up to 2 miles in length and a planned freight traffic increase of 400%, Barrington has discovered just how incompatible it is to have this enormous volume of rail freight dropped into its midst – especially since one train could block all crossings and the commuter train up to 20 times daily.

With the federal government's approval of this rail transaction, the character of Barrington will be changed forever. It is a glaring failure of federal policy that there is absolutely no federally-mandated mitigation fund in place to deal with the consequences of such an action by a private rail company. Instead, communities such as Barrington (and those nearby communities that are affected because they are served by Barrington's roadway system) and the business interests that have thrived along the EJ&E over the last several decades are treated like second class citizens and told that our interests are secondary to those of "Big Rail." TRAC asks the Transportation and Infrastructure Committee to remedy this failure in its SAFETEA-LU reauthorization.

The Cost Of Public Infrastructure Mitigation Must Be Made A Factor In The Railroads' Business Planning:

TRAC communities will pretend no expertise in the development of rail policy that balances the need to foster rail commerce with the protection of local community and other transportation modes. However, having been in the trenches in attempting to protect the region's interests under the current policy framework for the last three years, we believe that TRAC has the ability borne of experience to highlight inadequacies in the current public policy framework based on the unfolding of the EJ&E/CN merger, and proffer some suggestions as to how Congress might consider addressing them.

It has been TRAC's impression that the failure of current policy to weigh public interest beyond matters of competition for rail mergers that exponentially increase freight rail traffic in any given area is detrimental not only to the specific communities directly affected, but in fact, the national public interest writ large. It is essential that federal rail freight policy recognize the reality that the American taxpaying public ultimately pays for the federal government's investment in the costly infrastructure upgrades necessary to insure that the public and other mechanisms of transport in severely impacted communities are not perpetually gridlocked by a wall of rail freight traffic moving through them twenty-four/seven, 365 days a year. It is a matter not only of public convenience and facilitating a free flow of commerce by other transport mechanisms. But, also, it is also a matter of public safety as full unimpeded access by emergency responders is of critical necessity in protecting the well-being of the American public.

Since taxpayer dollars have traditionally been the "fix" to local problems created by railroads as they pursue their business interest of gaining competitive advantage no matter what the public consequences, it is essential that federal policy serve as a change agent for securing increased private sector investment in such projects by the railroad industry. ***Simply put, the taxpayer subsidy of the railroad industry must end.*** Congress needs to take steps that would incentivize the railroads to proceed with merger options that minimize the necessity for public infrastructure investment. As it is now, the railroads are allowed free rein to increase traffic wherever and whenever they like, leaving it to federal, state, and local taxpayers to serve as a shovel brigade to clean up the fall-out that is a natural consequence that stems from substantial increases in freight rail traffic in communities lacking the infrastructure to cope with it.

The failure to weigh any aspect of public interest beyond competition was a foundational flaw in the review of the EJ&E/CN merger in that CN has been allowed to expand Chicago's renowned rail congestion beyond the centrally recognized CREATE core when CN received federal regulatory approval to shift unprecedented levels of rail traffic to a line that has only 27.5% of its rail-to-road crossings grade-separated as opposed to keeping it running on its existing rail lines that are 58% grade-separated from intersecting roadways. The ultimate increase in rail traffic stemming from this merger is staggering -- ranging from a low of a 143% increase to a high of a 456% increase depending upon the segment of the EJ&E rail line one examines.

Relieving the freight gridlock burden on the public TRAC represents will require significant infrastructure investments in the years ahead. Because the federal government is charged with the approval process for rail mergers and the regulation of interstate commerce, it is incumbent upon the federal government to plan proactively to ameliorate the harms created in approving such transactions and secure increased private investment -- not leave it to local and state governments to address the ensuing problems. The necessity to relieve roadway gridlock along the EJ&E is underscored by the U.S. Census figures released in mid-February demonstrating that the population shift in the Chicago metropolitan area between 2000 and 2010 has continued the trend of the last several decades in which Chicago and Cook County are losing populations (-6.9% and -3.4% respectively over the last decade) while the collar counties grow at an aggressive pace (+34.9% in Will County; + 1.4% in DuPage County; +18.7% in McHenry County; and, +9.2% in Lake County.)

In responding to TRAC's oral summary of this problem on February 20, it was suggested to us that TRAC communities should consider looking at the $35 billion Railroad Rehabilitation and Improvement Financing (RRIF) program as a means of funding these grade separation infrastructure projects that are necessitated by CN's purchase of the EJ&E. In a review of that program, however, we have discovered that RRIF is really not available to us in addressing the needs of the region.

In the first place, it appears that RRIF covers railroad infrastructure projects – not highway infrastructure projects where a grade separation requiring a roadway be shifted above or below a rail line is the identified project. Even if rail-to-roadway grade separations were the focus of the RRIF fund, the many small communities along the EJ&E that might like to access such loans are not in the position of earning a revenue stream from a necessary grade separation project, and therefore, would be in no position to repay a RRIF loan to cover costs ranging from $11 million to $84 million per grade separation (depending upon the complexity of the grade separation project at each location significantly impacted by CN traffic.) The only entity in the funding equation that is earning a revenue stream and would be capable of repaying such a loan is CN; however, it has no incentive to serve as a partner in applying for any type of RRIF loan that might integrate its freight traffic into the TRAC communities. So unfortunately, the RRIF program -- as currently structured -- is a non-starter for TRAC member communities.

In responding to Chairman Mica's request to the participants at the February 20 listening session to identify problems and suggest possible solutions, we are happy to proffer some explicit changes in policy that the Committee might wish to consider. We realize that the Chairman noted several times that he would like to identify the "carrots" that could engender increased private sector funding of necessary infrastructure projects, however, it is difficult to imagine what "carrot" could be offered to the railroads to increase funding for the types of projects that will become so vital to the TRAC communities in the years ahead. Simply put, the financial interests of the railroads seem to be best-served by a preservation of the status quo in which they are expected to fund only about 5% of the cost of rail-to-roadway grade separation projects. With that as an initial observation, TRAC suggests the following:

Policy Concept 1:

In the decision approving the EJ&E/CN transaction, the STB required that CN pick up 67% of costs for a grade separation project in Aurora, IL and 78.5% in Lynwood, IL. This railroad match ratio is eminently sensible, as CN is overwhelmingly responsible for the harm it is creating along the EJ&E, and thus, should bear the lion's share of the accompanying mitigation financing burden. However, the fact that only two out of dozens of similarly impacted public grade level crossings on the EJ&E received this private sector investment benefit makes it advisable for *Congress to develop a set of appropriate threshold criteria that would be applied by regulators to trigger a substantial railroad financing allocation.* This funding threshold would be known by all parties in advance and only be triggered when the surrounding communities experience an exponential increase in freight traffic (whether or not that significant increase in traffic stems from operational changes requiring federal regulatory approval.) By developing a public-private infrastructure investment framework that holds railroads responsible for most of the costs associated with mitigating community and local business harms in certain cases, railroads will have a stake in lessening those costs in their business planning.

Policy Concept 2:

As a means of focusing public investment ***and*** incentivizing railroads to take into consideration the public harms their actions would cause in making merger decisions, *Congress may wish to consider identifying rail freight corridors of national and regional significance (such as the CREATE project in Chicago) that will be the primary focus of federal infrastructure investments to facilitate rail commerce in the decades ahead.* Then Congress could hold the railroads responsible for financing a substantial cost-allocation for infrastructure improvement projects ***if*** a railroad chooses to pursue merger transactions that will increase rail freight traffic above a baseline percentage on freight corridors that have not been designated by Congress as significant freight rail corridors.

Policy Concept 3:

Congress should explicitly empower federal regulators to make temporary rail operation decisions that can mitigate harms stemming from rail freight traffic. The goal should be to balance the railroads' interests with those of impacted communities and other forms of transport by allowing regulators to mandate a broad range of operational limits. Such limits could be lifted as surrounding infrastructure improvement projects that facilitate the integration of that freight rail traffic into impacted communities are completed.

In proffering these suggested changes to the nation's rail freight policies, TRAC emphasizes that they should not be the slippery slope to bankrupting the rail industry, as their application could be targeted to apply only to those few cases in which rail freight traffic will increase significantly ***and*** the existing infrastructure to integrate it into local communities is woefully inadequate for the population of the impacted region.

Summary:

On behalf of all the communities along the EJ&E that have been involved in TRAC's efforts to represent the region's interests in some form or fashion over the last three years vis-à-vis the CN/EJ&E merger, we thank the Committee for the opportunity to begin to outline our thoughts concerning necessary improvements in the public policy framework for the freight rail industry. We believe these concepts would lead to an increase in targeted private sector investment in infrastructure projects necessitated by freight rail operations.

It is essential that federal law and regulation recognize that judicious public and private investments are necessary and warranted because no American community – nor the taxpaying public – should continue being voiceless victims to international freight rail commerce decisions made solely at the discretion of the railroad industry or an individual railroad. There is a proper public policy balance that can be struck, and we trust that the Committee will be able to shift the pendulum to create an equitable way of fostering rail freight commerce while accommodating the concerns of specific impacted communities and American taxpayers. We stand ready to continue this dialogue with you as you shape the provisions of SAFETEA-LU during this Congress.